FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 631/2005
(Namdeo Kisana Kale & anr. VERSUS NamdeoSakharam Ghugul)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. A.R. Patil, Adv. for the appellants.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 17th August, 2007.

The appellants are the original defendants. A suit was filed by the plaintiff for specific performance of agreement of sale dated 31/5/1988. According to the plaintiff, the defendants had agreed to sell the suit land to the plaintiff for a consideration of Rs. 38,400/-. At the time of execution of the agreement of sale, an earnest amount of Rs. 30,000/- was paid by the plaintiff to the defendant nos. 1 and 2. The balance consideration of Rs. 8,400/- was payable at the time of the execution of the sale deed. The plaintiff pleaded that the plaintiff was ready and willing to perform his part of the contract.

The defendants denied the claim of the plaintiff and pleaded that the transaction dated 31/5/1988 was not an agreement of sale, but the document was, in fact, executed towards the

security of the loan which was advanced by the plaintiff to the defendants. It was the case of the defendants that since the defendants had not executed an agreement of sale in favour of the plaintiff, there was no question of readiness and willingness to perform their part of the contract.

The trial Court framed the issues and held that the plaintiff had proved the existence of a valid agreement of sale dated 31/5/1988. The Court further held that the plaintiff was ready and willing to perform his part of the contract. The Court then held that the defendants had failed to prove that the defendant nos. 1 and 2 were not legally entitled to effect any transfer of the suit land in favour of the plaintiff. The case of the defendants that the plaintiff obtained signatures of the defendant no.1 on the agreement of sale when he was under a state of intoxication, was also disbelieved by the trial Court. In spite of answering all the issues in favour of the plaintiff, the trial Court refused to grant a decree of specific performance on the ground that the hardship caused to the defendants would be greater than the hardship caused to the plaintiff, in case the specific performance of contract was enforced. According to the trial Court, the suit land was the only land belonging to the defendants and hence in view of the aforesaid fact, it was not necessary to grant the discretionary relief of specific

performance in favour of the plaintiff. The trial Court, therefore, granted the alternate prayer and directed the defendants to refund the earnest amount to the plaintiff along with interest @ 9% per annum thereon.

In an appeal filed by the plaintiff against the judgment and decree passed by the trial Court, the first appellate Court held that the trial Court was not justified in rejecting the prayer for grant of specific performance of contract. The appellate Court held that there was ample evidence on record to show that the transaction was not a loan transaction and the plaintiff was put in possession of the suit field right on the date of the execution of the agreement of sale i.e. on 31/5/1988. The appellate Court held that the defence of the defendants clearly show that the defendants avoided to perform their part of the contract in spite of the fact that a substantial amount of Rs. 30,000/- was received by the defendants towards the earnest amount. The appellate Court also observed that the defendants had obtained the necessary permission from the Collector to execute the sale deed in favour of the plaintiff. The appellate Court also observed that the defendants had not challenged the finding recorded by the trial Court against them, by filing any cross-objection or cross-appeal. The appellate Court then held that the trial Court was not justified

in holding that the defendant no.1 would be landless after executing the sale deed in favour of the plaintiff as defendant would still possess more than 10 hectares of land after selling the suit land to the plaintiff. In view of the aforesaid position, the first appellate Court observed that there would be no hardship caused to the defendants and it was necessary to pass a decree of specific performance in favour of the plaintiff. Under the aforesaid circumstances, the first appellate Court rightly allowed the appeal by granting a decree of specific performance of contract in favour of the plaintiff. The discretion exercised by the first appellate Court is based on sound judicial principle and the decision cannot be interfered by this Court, specially in the second appeal filed by the defendants.

Since no substantial question of law arises in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP